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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,940	03/08/2004	Kenneth Bruninga	115086-006	1344
7590 01/11/2006				
Bell, Boyd & Lloyd LLC P.O. Box 1135 Chicago, IL 60690-1135		EXAMINER MCGRAW, TREVOR EDWIN		
		ART UNIT PAPER NUMBER		
		3752		
DATE MAILED: 01/11/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/795,940	BRUNINGA, KENNETH	
	<b>Examiner</b>	<b>Art Unit</b>	
	Trevor McGraw	3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 27-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 30-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-40 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08/12/2004</u> | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-26 and 30-40, are drawn to an adjustable sprinkler connected to a pressure source and accompanying attributes to include a setting means for a spray boundary and a spray pattern controller coupled to a reverser classified in class 239, subclass 63.
  - II. Claim 27-29, are drawn to a spray pattern adjustment tool key for a pop-up sprinkler connected to a pressure source, classified in class 70, subclass 336.
2. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are a pop-up lawn sprinkler and an adjustment tool key are distinct separate inventions that can be used to water a lawn and open a lock configured to the adjustment tool key specifications.
3. During a telephone conversation with Mr. Adam Masia on 12/27/2005 at 4:00 p.m. est. a provisional election was made without traverse to prosecute the invention of Group I, claims 1-26 and 30-40. Affirmation of this election must be made by applicant in replying to this Office action. Claims 27-29 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-13, 17-19, 23, 24, 26, 31-35 and 39-40 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bruninga (US Patent No. 4,892,252).
5. Bruninga fully discloses all of the structure (Figure 2-8, 10) claimed in the present invention to include some of the following features: an outer housing (12), inner housing (18), spray nozzle (26), inlet openings (80), screen member (24), nozzle orifices (86), impeller (30), planetary gears (32), output member (34), slip clutch mechanism (36), coil spring (22), central hub portion (108), lever (106), reverser (40) and a pattern control assembly (38).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 14-16, 20-22, 25, 30 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruninga in view of Kah, Jr. (US Patent No. 4,867,378).

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7. Bruninga in view of Kah, Jr., it would have been obvious to one of ordinary skill in the art to add the top cover (4) nozzle stream direction arrowhead (72) as well as the adjustment slot (71) to allow for setting the oscillating angle for the spray boundaries of the sprinkler nozzle (51). Furthermore, it would also be obvious of one of ordinary skill in the art to separate the function of the cover (4) of Kah, Jr. into separate cover or cap embodiments to use independently of each other and add them to operate concomitantly with the sprinkler of Bruninga.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1, 8, 20 and 30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 18, of Bruninga (U.S. Patent

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No. 4,892,252) in view of Kah, Jr. (U.S. Patent No. 4,867,378). Claim 18 of Bruninga sets forth all the limitations of the current claims except for the cover means as taught Kah, Jr. It would have been obvious to one of ordinary skill in the art at the time of the present invention to provide the cover means (4) of Kah, Jr. and add it to Bruninga. It is to be noted that the present invention (filed 06/14/2004) and Bruninga (patent granted January 9, 1990) are of the same inventive entities.

### ***Specification***

9. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 10, line, 4 recites the limitation "support walls" while there is no reference to "support walls in the specification.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bruninga (4,892,252), Kah, Jr. (4,867,378), Walker et al (6,234,411), Ingham, Jr. et al. (6,732,950), Lawson (6,186,413).

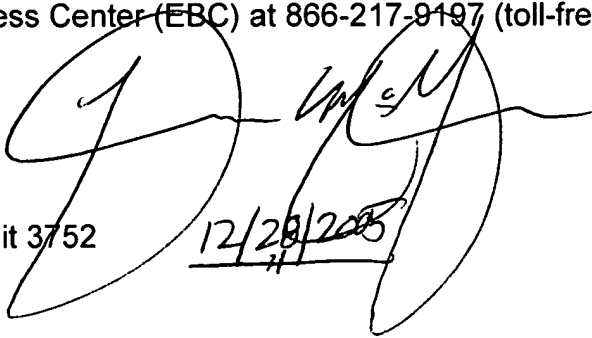
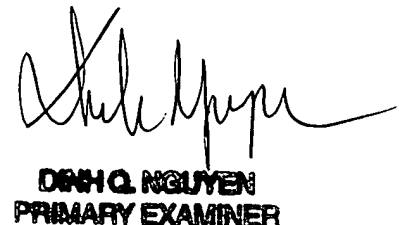
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trevor McGraw whose telephone number is (571) 272-7375. The examiner can normally be reached on Monday-Friday (2nd & 4th Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TEM  
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A large, stylized handwritten signature in black ink, with a date "12/28/2005" written below it.A handwritten signature in black ink, followed by the printed name "DINH Q. NGUYEN" and the title "PRIMARY EXAMINER" in bold, black, uppercase letters.